United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

ORIGINAL

76-7062

B

P/S

United States Court of Appeals

For the Second Circuit

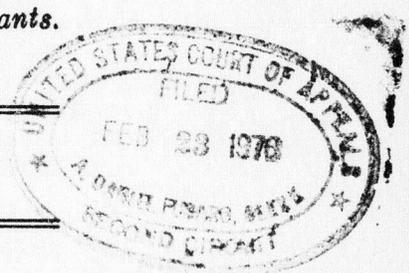
MARIA NURSE, *et al.*,
Plaintiffs-Appellants,

DARLENE K. WILLIS, individually and on behalf of all others similarly situated,
Plaintiff-Intervenor,

against

ALLIED MAINTENANCE CORPORATION, *et al.*,
Defendants,

SHEA GOULD CLIMENKO KRAMER & CASEY,
Appellants.



PLAINTIFFS-APPELLANTS' BRIEF

SHEA GOULD CLIMENKO KRAMER & CASEY
Attorneys for Plaintiffs-Appellants
330 Madison Avenue
New York, New York 10017
(212) 661-3200

Of Counsel:
MILTON S. GOULD
JOSEPH FERRARO
DEAN G. YUZEK

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL STATUTES AND REGULATIONS

ISSUES PRESENTED

Did the District Court err in disqualifying counsel for plaintiffs-appellants, on its own motion, without giving counsel an opportunity to present affidavits, testimony or argument to disprove the Court's assumption that counsel's representation of plaintiffs--individual members of a labor union--and the union presented a "clear conflict of interest"?

May a law firm which has acted as general counsel to a labor union represent individual members of the labor union in an action against their employers to recover equal pay?

STATEMENT OF THE CASE

This appeal is from an order made and entered, sua sponte, by Honorable Charles E. Stewart, Jr., United States District Judge, disqualifying the firm of Shea Gould Climenko & Kramer [sic] (hereinafter referred to as "Shea Gould") from further representation of plaintiffs in this proceeding. The order is purportedly based upon "undisputed facts" disclosed at hearings held on February 17 and 18, 1976, before Judge Stewart.

This action is brought by 641 female cleaners who are members of Local 32J of the Service Employees International Union ("Local 32J"). Plaintiffs seek damages from defendant Allied Maintenance Corporation ("Allied") and the building owners and managers who employ Allied on the ground that they have violated §6(d)(1) of the Equal Pay Act of 1963, 29 U.S.C. §206(d)(1) by paying their female cleaning and maintenance employees lower wages and benefits than they pay to their male cleaning and maintenance employees in the same establishments for work on jobs requiring equal skill, effort and responsibility and which are performed under similar working conditions. Each female member whose claims are asserted in this action has affirmatively consented to

the bringing of this action and, in accordance with 29 U.S.C. §§216 and 256, each plaintiff's individual written consent has been filed with the Court.

No disposition of the case has been made in the District Court, but a hearing is presently scheduled for February 27, 1976 at which the parties intend to seek Court approval for a settlement which has been agreed upon in this and approximately 75 other lawsuits.

THE FACTS

This action was commenced on or about November 7, 1974. It is one of approximately 76 equal pay lawsuits commenced by more than 6,000 plaintiffs represented by Shea Gould in the United States District Court for the Southern District of New York, against approximately 289 defendants. All of the plaintiffs are present or former members of Local 32J. The lawsuits were filed between June 19, 1974 and April 30, 1975 and involve virtually the entire cleaning and maintenance industry in the borough of Manhattan, State of New York. 70 of the lawsuits are pending before Judge Richard Owen, and the remainder are pending before Judge Charles E. Stewart, Jr. Most of the defendants (212) are named in the six actions which, like the present action, join as defendants the cleaning contractors which employ plaintiffs and the building owners or managers who, in turn, employ the cleaning contractors.

After these lawsuits were commenced, the parties entered into protracted and difficult settlement negotiations and have now reached a tentative agreement to compromise the parties' claims. The agreement would also serve as a new collective bargaining agreement between Local 32J and the employers. The agreement provides for immediate equal pay.

As noted above, the settlement agreement will be presented to the Court for approval on February 27, 1976.

Willis v. Allied Maintenance Corporation, et al. 75 Civ. 955, is a separate action (also pending before Judge Stewart) brought by an individual member of Local 32J on her own behalf and on behalf of all present and past female members of Local 32J who are or were employed to perform cleaning and maintenance services by Allied Maintenance Corporation or any of its subsidiaries, including the 641 women who have specifically retained Shea Gould to bring this action. Mrs. Willis' asserts class action claims and individual claims against Allied Maintenance Corporation and several of its subsidiaries, Local 32J, Local 32B, the Service Employees International Union, the Realty Advisory Board on Labor Relations, Inc., and the Building Service League.

Shea Gould does not represent any party in the Willis action although it did represent Local 32J in an administrative proceeding brought by Mrs. Willis before the Equal Employment Opportunity Commission.

Mrs. Willis' class action motion was granted on February 17, 1976.

Prior to that date, however, Mrs. Willis' attorneys had reached a settlement of her claims against defendant Allied. The settlement, by its terms, is binding on all members of the Willis class, including the plaintiffs-appellants in this action, Nurse v. Allied. The proposed Willis settlement would provide financial benefits to members of the class which are identical to those contained in the settlement which Shea Gould has negotiated in this action and in the other equal pay actions pending in the District Court. Because Shea Gould believed that other terms of the settlement would have deprived their clients of rights under collective bargaining agreements, they decided to advise their clients to object to the proposed settlement in Willis. Contending that Shea Gould's opposition to the Willis settlement was not motivated by a desire to protect the interests of Shea Gould's individual clients, but by a desire to protect the interests of Local 32J, the attorneys for plaintiff Willis presented Judge Stewart with an order to show cause in support of a motion to disqualify Shea Gould as counsel to plaintiffs in this case.* The order to show cause also contained a proposed temporary restraining order which would

* In connection with plaintiff Willis' motion to intervene in this case (which was submitted in October, 1975) she had alleged that Shea Gould had a conflict of interest in representing both 32J (as general counsel) and its individual members (as plaintiffs). No motion was made to disqualify Shea Gould, however. The motion to intervene was granted on February 17, 1976.

have prevented Shea Gould from, among other things, "exerting...influence of any kind...to persuade" members of the Willis class to oppose the Willis settlement. At approximately 1:00 P.M. on February 17, 1976, Shea Gould was advised that Judge Stewart would hold a hearing at 3:30 P.M. on that date to determine whether he should sign the proposed order to show cause and temporary restraining order.

During the argument, a member of the Shea Gould firm advised Judge Stewart that Shea Gould wanted to have a full hearing with respect to the application for disqualification, (see, e.g. Tr. p. 52), and explicitly requested that the hearing on the motion to disqualify Shea Gould not be scheduled for the following morning, as Judge Stewart had suggested, but for a time sufficiently far in advance so that Shea Gould would have an ample opportunity to prepare for such a hearing (Tr. p. 53). Nevertheless, after making certain modifications, Judge Stewart signed the order to show cause and temporary restraining order making it returnable at 10:00 A.M. on February 18, 1976.

During the hearing on February 17, 1976, the attorneys for plaintiff Willis and the attorneys for defendant Allied announced that they had entered into a supplementary memorandum of understanding (dated February 17, 1976) which provided explicitly that nothing in the Willis settlement

could deprive any member of the class of any rights or benefits provided in any collective bargaining agreement (Tr. p. 26).

As a result, on February 18, 1976, the attorneys for all parties conferred before Court convened, and resolved their differences in a seven point stipulation which was entered on the record and approved by the Court (Tr. p. 63). In accordance with the stipulation, Shea Gould agreed to withdraw their objections to the settlement in Willis and counsel for Willis withdrew their motion to disqualify Shea Gould as plaintiffs' counsel in this case.

Because of this resolution, no argument was held with respect to the motion to disqualify. Shea Gould submitted no affidavits and presented no evidence.

Although he had accepted the stipulation, which included the withdrawal of the motion to disqualify Shea Gould, and commended counsel for their efforts to resolve the controversy, Judge Stewart telephoned Mr. Gould during the afternoon of February 18, 1976 and advised him that he had signed an order disqualifying Shea Gould as plaintiffs' counsel.

The order purports to be based upon "undisputed facts" disclosed during the hearings held on February 17 and 18, 1976. The order does not specify which facts the Court relied on, but it seems clear from the colloquy held

before Judge Stewart that he regarded the following as undisputed and important matters:

(a) that Shea Gould has been since 1959 and continues to be general counsel to Local 32J;

(b) that Shea Gould participated in the negotiation of collective bargaining agreements which govern the relationship between the members of Local 32J and their employers, and which are challenged in the Willis action;

(c) that Shea Gould represented Local 32J in administrative proceedings brought by Darlene Willis before the Equal Employment Opportunity Commission.

Apparently on the basis of these assumptions, Judge Stewart concluded that Shea Gould had a "clear conflict of interest."

Judge Stewart was clearly advised, however, that Shea Gould does not represent Local 32J or its officers either in this case or in the Willis case. The Court was advised that counsel wished to present evidence with respect to the alleged conflict (Tr. p. 52), and that there was substantial "history" which the Court should know in connection with the bringing of these lawsuits and the representation of plaintiffs. Appellants respectfully submit that, had they been given the opportunity to present evidence and argument to the Court, they could establish:

(a) that the interests of Local 32J and its individual members with respect to equal pay are not in conflict;

(b) that the collective bargaining agreements negotiated by Local 32J do not provide for or foster sexual discrimination, but that the discrimination results from the employers' disregard of the provisions of the collective bargaining agreements;

(c) that Local 32J has not promoted sexual discrimination, but, in fact, has been the motivating force behind the commencement of lawsuits by its members for equal pay and the ultimate settlement of those lawsuits by an agreement which provides for immediate equal pay;

(d) that Shea Gould's representation of the plaintiffs in this case has not deprived them of any rights or compromised any rights which they might have to proceed against Local 32J;

(e) that, if Local 32J had not obtained for its members counsel who are familiar with the background of the equal pay controversy and who have the full cooperation of Local 32J, the claims of its members would never have been pressed;

(f) that, even if there werea conflict, the issue is now moot because the lawsuits in which Local 32J's general counsel represents its individual members have now been settled on terms which are no less favorable to plaintiffs

than those reached by independent counsel for plaintiff Willis.

Appellants respectfully submit that, on the basis of such a showing, they could establish that Shea Gould's representation of the plaintiffs in this action does not involve any conflict of interest.

POINT I

THE ORDER DISQUALIFYING COUNSEL IS APPEALABLE

Jurisdiction to review an order disqualifying an attorney has existed in this Circuit since 1949 under the doctrine of Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541. See, e.g., Fisher Studio v. Loew's Inc., 232 F.2d 199 (2d Cir. 1956), cert. denied, 352 U.S. 836 (1956); Emle Industries, Inc. v. Patentex, Inc., 478 F.2d 562 (2d Cir. 1973). Indeed, the only doubt with regard to appealability, injected by the decision of Fleischer v. Phillips, 264 F.2d 515 (2d Cir. 1959), cert. denied, 359 U.S. 1002 (1959), concerned orders refusing to disqualify. The Fleischer decision did not diverge, however, from the unbroken line of authority concerning the appealability of orders granting disqualification, and made express note of the fact that "[a]n order granting disqualification seriously disrupts the progress of the litigation and decisively sullies the reputation of the affected attorney." Id. at 517.

This Court recently undertook an en banc review of the question of appealability of disqualification orders in Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp., 496 F.2d 800, 805 (2d Cir. 1974), stating, in relevant part, that:

". . . we uphold the appealability of an order denying disqualification, just as we have long upheld the appealability of an order granting this. There is no sufficient basis for distinguishing between the two. In both situations the order is collateral to the main proceeding yet has grave consequences to the losing party, and it is fatuous to suppose that review of the final judgment will provide adequate relief."

POINT II

THE COURT ERRED IN DISQUALIFYING COUNSEL WITHOUT A HEARING

Although this Court has not mandated any procedure to be followed in an inquiry into questions of professional conduct, certain guidelines may be clearly discerned in relevant authority--guidelines which recognize the particular importance and sensitivity of orders disqualifying counsel and which the Court below simply did not follow. See, e.g., Lefrak v. Arabian American Oil Company, Docket Nos. 75-7234, 75-7235, 75-7236 (2d Cir., December 12, 1975), to the following effect:

> "The trial judge may be able to make the determination of impropriety vel non on the basis of oral arguments and affidavits, General Motors Corp. v. City of New York, 501 F.2d 639 (2d Cir. 1974), he may appoint a special master to ascertain the facts, Fisher Studio, Inc. v. Loew's Inc., supra, or he may conduct the evidentiary hearing which was provided here."

Similarly, in Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp., 518 F.2d 751, 753 (2d Cir. 1975), this Court reiterated Judge Kaufman's statement in United States v. Standard Oil Company, 136 F.Supp. 345, 367 (S.D.N.Y. 1955):

> "When dealing with ethical principles, it is apparent that we cannot paint with broad strokes. The lines are fine and must be so marked. Guide-posts can be established when virgin ground is being explored, and the conclusion in a particular case can be reached only after painstaking analysis of the facts and precise application of precedent."

C.f. the Tenth Circuit decision of Fullmer v. Harper, 517 F.2d 20, 21 (10th Cir. 1975):

> "We earlier granted Harper's request that there be a stay of all proceedings in the trial court til the present appeal has been resolved. Accordingly, the matter has been briefed and orally argued on an expedited basis. We now reverse on the grounds that the record before us is inadequate to permit a review of the action taken by the trial court.
>
> In our view the verified motion to disqualify raises ethical questions that are conceivably of a serious nature. In such circumstance a written response should be required. The trial court should then hold a full evidentiary hearing on the issues posed by the motion to disqualify and the response thereto, which hearing should include the taking of testimony. A motion of this type should not be resolved on the basis of mere colloquy between court and counsel." (Emphasis added)

In the present case, there was nothing more to justify the court's action than colloquy. The motion to disqualify had been withdrawn, with the court's approval. And, because it was withdrawn, no answer was made to it. Since counsel had no opportunity to develop the facts, it

is patently unfair to align this case with those cases in which disqualification has customarily been granted, i.e., cases which have "fallen into, or have come close to, the 'patently clear' category." Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp., 518 F.2d at 754. Judge Moore's review of some of the more recent decisions is, as he expressly notes, illustrative:

> "In Hull v. Celanese Corp., supra, an attorney who had worked in defense of the same case in the legal department of Celanese sought to join forces (albeit as a client) with the group suing Celanese and to be represented by the very law firm she had been opposing. The trial court initially denied the motion of the attorney to intervene, and little wonder that both trial and appellate court considered the opportunity for disclosure of confidential information to require disqualification of the law firm, Judge Tenney saying on appeal: 'Also, here the matter at issue is not merely 'substantially related' to the previous representation, rather, it is exactly the same litigation. 513 F.2d at 571.
>
> * * *
>
> In Emle Industries, Inc. v. Patentex, Inc., supra, this court used the 'substantially related' test as a guidepost in applying Canon 4 and disqualified the lawyer who first represented Burlington Industries, Inc. as a client and then turned about to represent a client suing a Burlington subsidiary. The court found that 'there are matters in controversy in each case-both the nature and scope of control, if any, exercised by Burlington, over Patentex-that are not merely 'substantially related,' but are in fact identical.' 478 F.2d at 572" 518 F.2d at 754-55.

Thus, ethical problems "cannot be resolved in a vacuum," Emle Industries, Inc. v. Patentex, Inc. 478 F.2d 562 (2d Cir. 1973), but rather must be weighed in the context of practical difficulties, competing ethical concerns, legislative policies, and constitutional rights. See, NAACP v. Button, 371 U.S. 415, 83 S. Ct. 328 (1963); Brotherhood of R.R. Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1, 84 S. Ct. 1113 (1964); United Mine Workers v. Illinois State Bar Ass'n., 389 U.S. 217, 88 S. Ct. 353 (1967); United Transportation Union v. State Bar, 401 U.S. 576, 91 S. Ct. 1076 (1971).

That view is also adopted in the Code of Professional Responsibility. For example, EC 5-17 refers to "typically recurring situations" involving conflicts of interest, including such volatile cases as "an insured and his insurer" and "beneficiaries of the estate of a decedent." An absolutist view would bar multiple representations in both those situations, yet EC 5-17 holds that the decision "depends upon an analysis of each case."

The court below, we submit, failed to make the required analysis in the present case and, indeed, gave counsel no opportunity to develop and present the facts necessary for such an analysis.

POINT I

THE UNDISPUTED FACTS DO NOT ESTABLISH A CONFLICT OF INTEREST

Judge Stewart's order can be sustained only if the "undisputed facts" which were adduced during the hearings on February 17 and 18, 1976 clearly establish a conflict of interest and that any further hearing or proof would be futile. As noted above, Judge Stewart appeared to rely on the fact that Shea Gould had acted as general counsel to Local 32J, had assisted in negotiating the collective bargaining agreements challenged by plaintiff Willis and had represented Local 32J in the administrative proceedings brought by Mrs. Willis before the Equal Employment Opportunity Commission.

While no case has been found in which all of these elements were present, the decision which bears most closely on the case at bar is the recent Southern District pronouncement in Rosario v. The New York Times Co., 10 EPD ¶10,576 (S.D.N.Y. 1975), an action brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e, et seq., and the Civil Rights Act of 1866, 42 U.S.C. §1981. The complaint therein prayed, inter alia, for declaratory and injunctive relief from discriminatory employment practices,

back pay, promotions and changes in seniority. In the course of considering the application for intervention of the Equal Employment Opportunity Commission, Judge Metzner had occasion to make the following reference:

> "Some time ago defendant sought to disqualify counsel for plaintiffs because they were also the attorneys for the Union which represented plaintiffs under the collective bargaining agreement with defendant. The firm of attorneys is well known, experienced and able in the field of labor relations and related matters. I denied defendants application because I saw no conflict of interest and because I knew that plaintiffs would be well represented, as their counsel so well argued.
>
> "In cases such as these, the public and private interests seem to merge. There is no doubt in my mind that plaintiffs' counsel are fully competent to protect the former as well as the latter. I dare say that plaintiffs' counsel are more conversant with the facts involved in this case than the applicant intervenor."

As Judge Metzner noted in his earlier decision, Rosario v. The New York Times Co., 10 EDP ¶10,450 (S.D.N.Y. 1975), the complaint therein did not claim that the collective bargaining agreement discriminated; the gravamen, instead, was that the agreement was being discriminatorily applied. While the conclusions excerpted above were not predicated upon this analysis of the Rosario pleadings, it is interesting to note that the same analysis can be applied in this case. Plaintiff

Willis and the employer defendants have accused Local 32J of negotiating descriminatory collective bargaining agreements, but the gravamen of the complaint in this case, is that the employers have engaged in discriminatory conduct not justified by any agreement. To the extent that Local 32J's conduct is being defended in this litigation, it is being defended by independent counsel, not by Shea Gould. Thus, Shea Gould is not required to contend for anything on behalf of plaintiffs here which it is required to dispute on behalf of anyone else in this or any other case. And, Shea Gould's familiarity with the prior negotiations is a benefit to plaintiffs, not a source of conflict. Judge Metzner's reference in Rosario, supra, to the similiar familiarity of the plaintiff's counsel with the facts involved therein is a reflection of the flexibility which necessarily attends--pursuant to the mandate of this Court--application of the Code of Professional Responsibility. See, e.g., International Electronics Corporation v. Flanzer, Docket Nos. 75-7159, 75-7216 (2d Cir. December 22, 1975), in which Judge Gurfein, speaking for the Court, expressly adopted the spirit of a brief submitted by the Connecticut Bar Association, as amicus curiae at the request of the Court:

> "It behooves this court, therefore, while mindful of tne existing Code, to examine afresh the problems sought to be met by that Code, to weigh for itself what those problems are, how real in the practical world they are in fact, and whether a mechanical and didactic application of the Code to all situations automatically might not be productive of more harm than good, by requiring the client and the judicial system to sacrifice more harm than the value of the presumed benefits."

This practical wisdom can readily be applied to the case at bar; in a situation where, as here, a union is accused by one of its members and by the employers of violating its duty and negotiating a discriminatory agreement, the Court should hear the full history before allowing that accusation to create a "conflict of interest." Accord, J.P. Foley & Co., Inc. v. Vanderbilt, 523 F. 2d 1357, 1360 (2d Cir. 1975), in which Judge Gurfein, in concurrence, stressed the need for "prevent[ing] literalism from possibly overcoming substantial justice to the parties.":

> "First, I think a court need not treat the Canons of Professional Responsibility as it would a statute that we have no right to amend. We should not abdicate our constitutional function of regulating the Bar to that extent. When we agree that the Code applies in an equitable manner to a matter before us, we should not hesitate to enforce it with vigor. When we find an area of uncertainty, however, we must use our judicial process to make our own decision in the interests of justice to all concerned.

"Second, the interests of justice in this case involve not only the ethics of the lawyer but also the rights of his client, the Foleys. Up to now this court has been largely concerned with breaches of professional ethics caused by alleged former representations by lawyers, applying Canon 4 or Disciplinary Rule 9-101(B), though we have also painted with a broad brush using the color of Canon 9....

"In Ceramco Inc. v. Lee Pharmaceuticals, 510 F.2d 268, 271 (2d Cir. 1975), we noted that these cases were based on 'the need to enforce the lawyer's duty of absolute fidelity and to guard against the danger of inadvertent use of confidential information.'

"Having made my own reservations explicit, I would also direct the District Court to give the Foleys, after affording them full information about the problem, a chance to express their own preference. That expression will, of course, not be binding on the court, but if courts are to take action that may adversely affect the client, the client should have a chance to express himself. Id. at 1395-60."

The undisputed facts themselves show that this case is not at all like those decisions holding that defendant union officers may not use counsel which is also employed by the union. See, e.g., Holdeman v. Sheldon, 311 F.2d 2,3 (2d Cir. 1962):

"We specifically note approval of the court's suggestion that on motions for injunctions of this sort, the district court should, after a preliminary hearing if necessary, determine whether

> the plaintiff has made a reasonable showing that he is likely to succeed, and whether the conduct of the defendants is in conflict with the interests of the Union."

Accord, Weaver v. United Mine Workers of America, 492 F.2d 580 (D.C. Cir. 1973)* and Tucker v. Shaw, 269 F.Supp. 924 (E.D.N.Y. 1966), aff'd, 378 F.2d 304 (2d Cir. 1967).

In contrast to the foregoing decisions, quite a different situation is present here. Local 32J, by definition, is an unincorporated association of persons for a common purpose. This is not an action by union members against union officers for unlawful diversion of union funds and properties. That the union herein represented its members in negotiating collective bargaining agreements which the employers now try to blame for their discriminatory practices does not put the union in a conflicting position as to its members. As in Rosario v. The New York Times Co., supra, the complaint herein does not claim that the collective bargaining agreement discriminated; the gravamen, instead, is that the employers engaged in discriminatory conduct unjustified by any agreement.

---

* Indeed, in Weaver, the court acknowledged that "separate counsel is required only in a situation where there is a potential conflict between the interests of the unions and those of its officers." 492 F.2d at 584. And the court allowed the union to be represented by attorneys who had formerly represented dissident officers, where the union leadership had changed, and the union's policies were brought into harmony with those of the officers.

Nor is this case comparable to such decisions as Lynch v. Sperry Rand Corp., 62 F.R.D. 78 (S.D.N.Y. 1973), where conflicts of interest caused the Court to preclude union plaintiffs from representing a class comprised of male members. Having disqualified the unions as proper class representatives, the Court was confronted with a situation in which counsel was representing two parties in the same litigation--unions and individual members--who were already determined to have conflicting interests. Such dual representation of parties to the same lawsuit is not the only obvious point of departure between Lynch and the case at bar. Defendant's contention in Lynch was that "[s]ince the union plaintiffs represent both male and female employees of Sperry, there is a serious potential conflict between the duty of the plaintiff unions to its male employee membership and their duty to female employee members." This, said Sperry, was a conflict "which relates directly to the merits of the claims of discrimination and the remedies if such claims are sustained." Id. at 83,84. While such a remedial conflict may have been at least arguably discernible in the context of the Lynch decision, the gravamen of which was the charge that the Sperry pension plans discriminated against male employees and retirees and in favor of women of the same status, no similar confilct is even arguably discernible in the context of the instant action. The gravamen

of the case at bar is the question of equal pay. Under the express terms of the Equal Pay Act §6(d)(1) any remedy which may ultimately be fashioned herein may not equalize pay and benefits by lowering those of the higher paid workers. Rather, benefits which already inure to one class of the membership must, without diminution for anyone, be similarly extended to others.

Appellants respectfully contend that the dual representation of a union and the members who compose it is not a situation so fraught with potential conflict that it must automatically result in disqualification of counsel. Nor should counsel be disqualified simply because they assisted in negotiating agreements which are now claimed by some employers and at least one member to be discriminatory. Counsel should be permitted, at least, to make a record to show that there is no conflict and that the dual representation is in no way prejudical to plaintiffs here.

CONCLUSION

The order dated February 18, 1976 disqualifying Shea Gould as counsel to plaintiffs herein should be reversed.

Respectfully submitted,

SHEA GOULD CLIMENKO KRAMER & CASEY
Attorneys for Appellants

Of Counsel:

Milton S. Gould
Joseph Ferraro
Dean G. Yuzek

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb. 1976

Signed [signature]

Attorney for VET

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb. 1976

Signed [signature]

Attorney for Defendant Bank of America

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb. 1976

Signed [signature]

Attorney for [illegible]

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb. 1976

Signed [signature]

Attorney for Chem. Bank

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb. 1976

Signed [signature]

Attorney for Defendants

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb. 1976

Signed [signature]

Attorney for Defendants

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb. 1976

Signed [signature]

Attorney for plaintiff

307 BAR PRESS, Inc., 132 Lafayette St., New York 10013 – 966-3906

(4995)

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb 1976

Signed Richard D. Kaufman

Attorney for Dirlam Weeks

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb 1976

Signed Teen D. Mele

Attorney for 32-J

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb 1976

Signed Dreyer and Traub

Attorney for Samuel Leftakt

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb 1976

Signed Proskauer Rose Goetz & Mendelsohn

Attorney for PAB

by P Castellano
Managing Clerk's Office

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb 1976

Signed Gradard Moskowitz, Mc Goldrick Dato & Hornung

Attorney for Allied Maintenance

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb 1976

Signed

Attorney for

ROSENMAN COLIN FREUND LEWIS & COHEN
ATTORNEYS FOR

Service of 2 copies of this within Brief is hereby admitted this 23rd day of Feb 1976

Signed Capt. Warren
Police Department

Attorney for Mrs. Vital

Service of 2 copies of the within Brief is hereby admitted this 23rd day of Feb 1976

Signed

Attorney for

307 BAR PRESS, Inc., 132 Lafayette St., New York 10013 – 966-3906

(4995)